

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

JANTRAN, INC.

PLAINTIFF

vs.

Civil Action No. 2:96cv085-D-B

SPHERE DRAKE INSURANCE, P.L.C.

DEFENDANT

MEMORANDUM OPINION

Presently before the court is the motion of the defendant Sphere Drake Insurance, P.L.C. ("Sphere Drake") to compel arbitration between the parties in this matter and to stay this cause pending the resolution of arbitration. Finding that the motion is well taken, the court shall grant the motion.

. BACKGROUND

The plaintiff, Jantran, Inc. ("Jantran") operates a shipyard and towing business in Rosedale, Mississippi. During the course of operating this business, Jantran purchased and maintained policies of insurance from the defendant Sphere Drake. This action arises out of Sphere Drake's denial of coverage under those policies of insurance and the voiding of the then-current policy. The matter currently before the court involves the following provision contained in the policy of insurance issued to Jantran:

. . . any difference between the Company [Sphere Drake] and the Assured [Jantran] arising out of or in connection with the Policy of Insurance shall be referred to arbitration in London . . .

Exhibit A, 2 to Defendant's Motion. Sphere Drake Marine Insurance Policy. All of the policies issued to Jantran by Sphere Drake contained a substantially identical provision. In light of this clause contained in the policy of insurance, Sphere Drake moves this court to compel arbitration in accordance with the policy.

II. DISCUSSION

. Should the court require arbitration?

Normally, when parties request that this court compel arbitration, the undersigned looks

to the provisions of the Federal Arbitration Act ("FAA"). 9 U.S.C. § 1, et seq. In this case, however, it is pivotally important that Sphere Drake is a corporate citizen of Great Britain. In light of the differing nationalities of the parties in this cause, arbitration is governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38, *reprinted in* 9 U.S.C.A. § 201 note (Supp. 1996) ("Convention").¹ However, the terms of the Convention are approximately equivalent to the FAA. McDermott Intern. v. Lloyds Underwriters of London, 944 F.2d 1199, 1208 (5th Cir. 1991). As such, the Convention incorporates the FAA except where the FAA directly conflicts with the Convention. McDermott, 944 F.2d at 1208. Further, pursuant to the Convention,

[a] court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement.

9 U.S.C. § 206 (1996 Supp.).

This court is required to look at four factors to determine the propriety of arbitration under the Convention:

-) Is there an agreement to arbitrate the dispute or is the agreement broad or narrow?;
-) Does the agreement provide for arbitration in the territory of a Convention signatory?;
-) Does the agreement to arbitrate arise out of a commercial relationship?; and
-) Is a party to the agreement not an American citizen?

Sedco, Inc. v. Petroleos Mexicanos Mexican Nat. Oil Co. (Pemex), 767 F.2d 1140, 1144-45 (5th Cir. 1985); Continental Insurance v. Jantran, Inc., 906 F. Supp. 362, 365-66 (E.D. La. 1995). If all of these factors are met, this court has no discretion to deny the defendant's motion and must compel arbitration pursuant to the agreement.

[T]he Arbitration Act requires district courts to compel arbitration of pendent arbitrable

¹ It appears undisputed by the parties that both the United States and Great Britain are signatories to the Convention. 9 U.S.C. § 201, note, Art. XVI.

claims when one of the parties files a motion to compel, even where the result would be one of the possible inefficient maintenance of separate proceedings in different forums . . . By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall direct* the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.

Sedco, 767 F.2d at 1147 (quoting Dean Whitter Reynolds v. Byrd, --- U.S. ---, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985)). Likewise, the Convention leaves this court no discretion. 9 U.S.C. § 201, note, Art. II(3) (stating that court of signatory nation "shall, at the request of one of the parties, refer the parties to arbitration . . ."). Sphere Drake has persuasively argued to the court that all of these factors are met.

Rather than dispute Sphere Drake's argument that all of these factors have been met in this case, Jantran simply contends that the issues raised in this lawsuit are not encompassed by the arbitration provision proffered by Sphere Drake in this cause:

Plaintiff's lawsuit against the defendant is a separate and independent tort action seeking actual damages, interest, punitive damages and attorney's fees and costs for the wrongful and tortuous conduct of the Defendant in withholding and refusing to return the Plaintiff's money. There are no issues pending which arise out of or are connected with the insurance policy.

Plaintiff's Response, p.2. Upon reading Jantran's complaint, however, the court notes that this is not at all the only claim raised by the plaintiff in this cause. Jantran also charges Sphere Drake with the wrongful termination of insurance coverage, which subjected it to litigation costs and expenses.

These parties agreed to arbitrate "any difference between the Company [Sphere Drake] and the Assured [Jantran] arising out of or in connection with the Policy of Insurance," and that clause is enforceable as an "agreement to arbitrate" pursuant to the Convention. See, e.g., Sphere Drake Inc. P.L.C. v. Marine Towing, Inc., 16 F.3d 666, 669-70 (5th Cir. 1994) (noting that an "agreement in writing" pursuant to the Convention includes "an arbitral clause in a contract" which need not necessary be signed by the parties); Contentental Ins., 906 F. Supp. at 365-66. This particular agreement to arbitrate is a broad one, and its broadness indicates that the parties intended the clause to reach all aspects of their relationship. Valentine Sugars, Inc. v. Donau

Corp., 981 F.2d 210, 213 n.2 (5th Cir. 1993) (citing Neal v. Hardee's Food Sys., 918 F.2d 34, 37-38 (5th Cir. 1990)). There is a strong presumption in favor of arbitration, and any doubts concerning the scope of an arbitration clause are to be resolved in favor of arbitration. National Iranian Oil Co. v. Ashland Oil, Inc., 817 F.2d 326, 335 (5th Cir. 1987) (stating "[A]rbitration should not be denied 'unless it can be said with positive assurance that an arbitration clause is not susceptible of an interpretation which would cover the dispute at issue.'"); Sedco, 767 F.2d at 1145. When looking to the directives that this court must follow in determining the scope of the arbitration clause in this matter, the undersigned cannot say that the claims asserted in the plaintiff's complaint fall outside of the arbitration clause in effect in this case. All of the plaintiff's claims are inexorably intertwined with the issuance, maintenance and termination of the policies of insurance between these two parties. To say that the plaintiff's claims lack a "connection" with the policies of insurance between the parties defies sound logic.

III. CONCLUSION

Upon review of the relevant factors in this case, the undersigned is of the opinion that the arbitration clause is valid and enforceable in this case. This court shall grant the defendant's motion, compel arbitration in this cause and stay these proceedings to allow a sufficient time for the parties to arbitrate their disputes.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of April 2001.

United States District Judge

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SPHERE DRAKE INSURANCE, P.L.C.

DEFENDANT

ORDER GRANTING MOTION TO COMPEL ARBITRATION
AND STAY PROCEEDINGS

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

- 1) The motion of the defendant Sphere Drake Insurance, P.L.C., to stay these proceedings and compel arbitration is hereby GRANTED;
- 2) This matter is hereby STAYED for one hundred and twenty (120) days to allow the parties to conduct arbitration proceedings in accordance with the arbitration clause contained in the prior contracts of insurance between the parties;
- 3) The parties are hereby instructed to inform the court of the findings of the arbiter when the arbitration procedure is complete.

SO ORDERED, this the _____ day of April 2001.

United States District Judge